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June 10, 1997

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

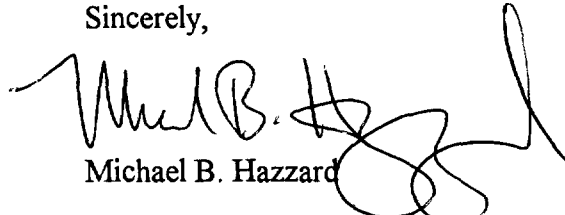
Re: CC Docket No. 93-137

Dear Mr. Caton:

Enclosed please find an original, eleven copies, and a diskette version of comments by LCI International Telecom Corp. in opposition to Ameritech Michigan's Section 271 Application.

If you have any questions or require additional information, please phone me at 703-836-7370.

Sincerely,



Michael B. Hazzard

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Application of Ameritech Michigan
Pursuant to Section 271 of the
Telecommunications Act of 1996 to
Provide In-Region, InterLATA Services
in Michigan

CC Docket No. 97-137

**COMMENTS OF LCI INTERNATIONAL TELECOM CORP. IN OPPOSITION
TO AMERITECH MICHIGAN'S SECTION 271 APPLICATION**

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SUMMARY OVERVIEW

LCI International Telecom Corp. ("LCI") opposes Ameritech's application for authority to provide in-region, interLATA services in Michigan. LCI is currently the fourth largest long distance carrier in Michigan. It is directly interested in Ameritech's application. LCI wants to offer local exchange and exchange access service in Michigan in competition with Ameritech. LCI wants to compete, but on fair and equal grounds. This cannot happen if the Commission grants Ameritech's application now.

LCI began its efforts to compete against Ameritech in October of 1996, when it first started reselling local service to small business customers in Illinois. In March of 1997, LCI began providing local service in Michigan and Ohio, again on a resale basis, and it plans to expand very soon to other states in Ameritech's region. LCI recognizes, however, that it cannot be a meaningful long-term competitor to Ameritech for local service if it only resells Ameritech's services. Thus, one aspect of LCI's plan is to transition as quickly as possible to providing local exchange and exchange access service in Ameritech's region (and elsewhere) through the "network platform" made up of combined network elements obtained from Ameritech -- a competitive strategy strongly promoted by the Telecommunications Act of 1996 ("Act") and the Commission's orders and regulations.

In the eight months that LCI has been attempting to implement its competitive strategy in Ameritech's region, including in Michigan, it has encountered numerous road blocks erected by Ameritech -- road blocks that demonstrate that Ameritech has yet to (1) fully and irreversibly open up its local exchange and exchange access monopoly to competition from LCI and others, and (2) comply with the obligations required of it under Section 271 of the Act. As will be discussed in greater detail below, Ameritech's application should be denied for among the following reasons:

- **Ameritech has failed to provide LCI with nondiscriminatory access to network elements as required under Sections 271(c)(2)(B)(ii) and 251(c)(3) of the Act:**

In an effort to move forward with its "network platform" strategy, LCI has been endeavoring for over three months to order from Ameritech and test a simple combination of network elements, consisting of loops, local switching, and common transport over Ameritech's interoffice network. Ameritech has thus far refused to provide the network elements in the combination requested by LCI. See Ex. A and B hereto, Aff. of Joe Gillan and Anne K. Bingaman.

- **Ameritech is presently unable to provide combined network elements to CLECs in commercially reasonable quantities, and it does not yet have in place workable systems and procedures to measure, record and exchange the data necessary to permit CLECs to bill their end-users and bill interexchange carriers for access charges:**

Ameritech recently advised LCI that it lacked the resources to provision and test the network platform requested by LCI at the same time it was conducting a network platform "test" with AT&T. Moreover, Ameritech's "test" with AT&T as currently defined is so limited (20 lines, with no exchange of access billing data) that it will not permit any meaningful determination as to whether Ameritech is capable of providing combined network elements in a commercially reasonable manner. See Ex. A hereto, Aff. of Joe Gillan.

- **Ameritech is not providing LCI with parity of access to the functions of its operations support systems ("OSS") as required under Sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(iv) of the Act:**

Ameritech's OSS maintains dual billing systems which are not compatible with each other. This has prevented Ameritech from providing accurate billing usage data to LCI; it has resulted in double billing to LCI customers; and it has caused LCI to lose accounts back to Ameritech. Additionally, Ameritech has not provided LCI with accurate and up-to-date listings of its Universal Service Order

Codes ("USOCs"), nor despite months of written and oral request, is it providing LCI with timely billing information equal to that which Ameritech has for itself. See Ex. C hereto, Aff. of Wayne Charity.

- **Ameritech has not yet proved, and cannot prove on the record before this Commission, that the interfaces it has established to its OSS are sufficient to enable LCI (and other CLECs) to perform OSS functions in substantially the same time and manner that Ameritech can for itself, as required under the Act and the orders of this Commission:**

More than one-half of Ameritech's interfaces have not been put to commercial use; those that are being used commercially are failing to flow through a substantial number of the orders without manual intervention; and Ameritech has not put forward performance measures and standards sufficient to prove that the OSS function it is providing to CLECs are at parity with the service it provides to itself.

- **Ameritech has foreclosed to competition from LCI (and other CLECs) a substantial portion of its local service market by using long-term contracts with substantial termination penalties to deter its customers from switching their service to a competitor:**

LCI has recently discovered that Ameritech is employing long-term contracts for combined local and intraLATA services, and for Centrex services, that impose impermissible restrictions on LCI's ability to resell local service up to 60% of the business customers in Michigan. See Lockwood Aff., Ex. K hereto. It would not, therefore, be in the public interest to permit Ameritech to enter the long distance market at this time when its local monopoly is foreclosed from competition.

In sum, Ameritech has not yet satisfied its Section 271(c) obligations; it is discriminating against its potential competitors; and its local exchange service and exchange access monopoly is not yet open to any meaningful competition. To grant the application at this time -- to give Ameritech free reign to begin competing in the long distance service market -- would eliminate any incentive that Ameritech might

otherwise now have to correct these deficiencies, which, in turn, will indefinitely delay, and perhaps foreclose altogether, the primary objective of the Act: competition in the local services market. Ameritech's application should, therefore, be denied.

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
	SUMMARY OVERVIEW	i
I.	AMERITECH'S APPLICATION MUST BE DENIED BECAUSE, BY ITS OWN ADMISSION, IT IS NOT PROVIDING ALL OF THE CHECKLIST ITEMS TO COMPETITIVE CARRIERS	4
II.	AMERITECH'S APPLICATION MUST BE DENIED BECAUSE IT IS NOT PROVIDING NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS AS REQUIRED BY THE ACT	7
A.	LCI's Request To Ameritech For Combined Network Elements.	8
B.	Ameritech's Refusal To Provide The Network Elements In The Combination Requested By LCI.	10
III.	AMERITECH'S APPLICATION MUST BE DENIED BECAUSE IT IS NOT CURRENTLY PROVIDING LCI WITH NON-DISCRIMINATORY ACCESS TO THE FUNCTIONS OF ITS OSS.....	14
A.	Ameritech's Two Billing Systems Discriminate Against LCI In Its Resale Business.....	15
B.	Ameritech Has Not Provided LCI With Equal Access To Accurate And Up-To-Date USOCs.....	16
C.	Ameritech Has Not Provided LCI With Timely Billing Information.	17
1.	Daily Usage Files.....	17
2.	AEBS Invoices.....	18
IV.	AMERITECH HAS NOT PROVEN THAT THE ELECTRONIC INTERFACES TO ITS OSS ARE OPERATIONALLY READY.	20
V.	AMERITECH CANNOT PROVE THAT IT IS PROVIDING PARITY OF ACCESS TO ITS OSS BECAUSE IT LACKS ADEQUATE PERFORMANCE MEASUREMENT AND STANDARDS	22

TABLE OF CONTENTS (con't.)

<u>Section</u>	<u>Title</u>	<u>Page</u>
A.	Ameritech's Anticompetitive Long-Term ValueLink Contracts, Which Explicitly Tie Local Service to its Anticompetitive ValueLink Contracts.	25
B.	Ameritech's Anticompetitive Billing Practice.....	28
C.	Ameritech's Anticompetitive Long-Term Centrex Contracts.	29
D.	Ameritech's Anticompetitive Long-Term Pricing Contracts.	30
E.	Ameritech's Response.	30
F.	Summary And Relief Requested.....	32
VII.	CONCLUSION	33

I. AMERITECH'S APPLICATION MUST BE DENIED BECAUSE, BY ITS OWN ADMISSION, IT IS NOT PROVIDING ALL OF THE CHECKLIST ITEMS TO COMPETITIVE CARRIERS.

Pursuant to Section 271(d)(3), the Commission "shall not approve" Ameritech's application unless Ameritech has established, among other things, that it has "fully implemented the competitive checklist" set forth in Section 271(c)(2)(B). To "fully implement" the competitive checklist when proceeding under "Track A," as Ameritech is here, a Bell operating company ("BOC") is required to show that it has "provided" to competitive carriers each of the 14 items from the competitive checklist.

Ameritech, by its own admission, has not met this requirement. Ameritech concedes in its application that it is not furnishing at least one of the checklist items -- unbundled local switching -- to any CLEC, claiming that no CLEC has requested this item. [See Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Service in Michigan ("Ameritech Brief") at 15.] Ameritech contends, however, that it is not required to "actually furnish" every checklist item to be deemed in compliance; it is enough if the checklist items have been "made available." [Ameritech Brief at 10.]

Ameritech's claim that no competing provider has requested unbundled switching is not correct. LCI has been attempting for over three months to obtain this checklist item in connection with other network elements, as is discussed in more detail below. [See, *infra* at pp. 8-10.]

Moreover, Ameritech's expansive interpretation of the verb "provide" completely undermines the fundamental distinction that Congress established between "Track A" and "Track B" applications. Track A applications require the BOC to show that it has approved agreements and that, pursuant to those agreements, it "is providing" access and interconnection to its network elements to "competing providers," as further defined by the statute. [§ 271(c)(1)(A).] Track B applications, on the other hand, require the BOC to show only that it "generally offers to provide such access and interconnection" in cases where the

provider, or if it has, where the competing provider has thereafter failed to negotiate in good faith or to implement the access or interconnection within a reasonable period of time. [§ 271(c)(1)(B).]¹ This same distinction between the terms "providing" and "generally offering" is carried through to the competitive checklist subsection. [See § 271(c)(2)(B) ("Access or interconnection *provided or generally offered* by a Bell operating company . . .") (emphasis supplied).]

If, as Ameritech contends, "provide" is synonymous with "offer" or "make available," there would have been no need for Congress to have included language in Track B allowing a BOC to rely on an "offer" in circumstances where a competing provider fails to negotiate in good faith or fails to timely implement its interconnection agreement. Indeed, there would have been no need at all for a Track B separate from Track A; Congress could have simply allowed the BOCs to "offer" or "make available" the checklist items in an SGAT, rather than require the actual implementation of interconnection agreements. Congress chose the latter, requiring actual implementation when filing under Track A. [See H.R. Conf. Rep. No. 104-458, 104th Cong., 2nd Sess. 148 ("The requirement [under Track A] that the BOC 'is providing access and interconnection' means that the competitor has implemented the agreement and the competitor is operational.") (emphasis added)] It is a fundamental canon of statutory interpretation that a statute should *not* be interpreted in such a way as to render one part meaningless. [See, e.g., *Colautti v. Franklin*, 439 U.S. 379, 392 (1979).]

Ameritech admittedly has not "provided" one of the checklist items. Even if it were true, as Ameritech contends, that no competing provider has yet requested this item, Ameritech has not shown that the absence of such a request is the result of any bad faith or

¹ The fact that Ameritech has a remedy under Track B if CLECs are intentionally refraining from ordering checklist items eliminates the possibility, as argued by Ameritech, that its competitors could become "the gatekeeper of its entry into long distance." [Ameritech Brief at 19.]

failure on the part of CLECs to timely implement their agreements. For this reason, Ameritech's application must be denied.

II. AMERITECH'S APPLICATION MUST BE DENIED BECAUSE IT IS NOT PROVIDING NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS AS REQUIRED BY THE ACT.

The second item on the checklist, and one of Ameritech's most important obligations under the Act, is the provision of "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) imposes upon Ameritech:

The duty to provide to any requesting telecommunication carrier for the provision of a telecommunication service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . . *An incumbent local exchange carrier shall provide such unbundled elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.*"

(Emphasis supplied.)

In regulations under the Act, the Commission has reiterated this Congressional mandate. Thus, an incumbent local exchange carrier ("ILEC") (1) "shall provide network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service"; and (2) "shall perform the functions necessary to combine unbundled network elements *in any manner*," provided the combination is technically feasible and does not impair the ability of other CLECs to obtain access on interconnection." [47 C.F.R. § 51.315(a) and (c) (emphasis supplied).] Moreover, in its First Report and Order on local competition, the Commission directed that this nondiscriminatory access must both be "equal-in-quality to that which the incumbent LEC provides to itself," and must allow the CLECS as new market entrants to share in the ILEC's "economies of density connectivity, and scale." *Implementation of the Local*

Competition Provisions of the Telecommunications Act of 1996, CC Docket No 96-98, First Report and Order 11 FCC Rcd at ¶¶ 312, 11 (Aug. 8, 1996) ("Local Competition Order").

Despite its claims to the contrary, Ameritech has not fulfilled these obligations. Indeed, Ameritech has refused to provide LCI with a simple combination of network elements, not because of any technical infeasibility, but, instead, either because it believed, wrongly, that it was not under a legal obligation to do so, or because it apparently lacked sufficient engineering resources to meet LCI's request. Neither reason is an acceptable one under the Act.

A. LCI's Request To Ameritech For Combined Network Elements.

Beginning over three months ago, LCI requested that Ameritech provide it with a very simple combination of network elements: loops, local switching, and access to Ameritech's interoffice network for the transport and termination of calls. [See Affidavit of Joseph Gillan ("Gillan Aff.") Ex. A hereto at ¶¶ 4-5 and Exhibit 1; Affidavit of Anne K. Bingaman ("Bingaman Aff."), Ex.B.] LCI's plan was to create a network platform that would rely on the existing algorithms in the Ameritech switch for routing local exchange and interexchange traffic, and to share with Ameritech (and, where applicable, other unbundled local switch purchasers) Ameritech's interoffice network for purposes of routing local calls. [Gillan Aff., Ex A at ¶ 5.] By purchasing the network elements in this combination, it was LCI's intent to become not only the provider of local exchange service to its end-users, but the provider of exchange access services as well. [*Id.*] This would enable LCI to collect access charges, both originating and terminating, from interexchange carriers that originated and terminated calls with those end-users. [Gillan Aff., Ex. A at ¶¶ 5-6; Bingaman Aff., Ex. B at ¶ 5.] It would also entitle LCI to collect reciprocal compensation for the termination of local calls to its end-users, and would obligate LCI to

pay compensation for the termination of local calls originated by its customers. [Gillan Aff., Ex. A at ¶ 5.] This use of combined network elements was specifically authorized by the Commission in its Local Competition Order and in its Order on Reconsideration.²

LCI made this request to Ameritech as a first step towards implementing its business strategy of transitioning, as quickly as possible, from a reseller of local service to a provider of such service through a "network platform" comprised of combined, network elements. [See Affidavit of Wayne Charity ("Charity Aff."), Ex. C, at ¶ 5.] LCI requested Ameritech to provide these network elements on a limited basis for testing purposes so that LCI could be assured, when it was prepared to move forward on a full-scale commercial basis, that: (1) LCI could order and deploy the network elements in combination; (2) Ameritech could provision them in commercially reasonable quantities; (3) LCI customers could be added to the platform and receive timely and reliable service; and (4) Ameritech had all of the systems and procedures in place to measure, record, and exchange all of the data necessary to permit

² In its Local Competition Order at ¶ 363, the Commission specifically recognized that: where new entrants purchase access to unbundled network elements to provide exchange access services . . . the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to such IXCs because the new entrants, rather than the incumbents, will be providing exchange access services. . . .

Subsequently, in its Order on Reconsideration, the Commission again acknowledged that:

[A] carrier that purchases the unbundled local switching element to serve an end-user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end-user. A practical consequence of this determination is that the carrier that purchases the local switching element is likely to provide all available services requested by the customer served by that switching element, including switching for local exchange and exchange access.

In the Matter of Implementation of the Local Competition Provisions In the Telecommunications Act of 1996, CC Docket No. 96-98, Order on Reconsideration, 11 FCC Rcd 13042 at ¶ 11 (Sept. 27, 1996) ("Order on Reconsideration").

LCI to bill its end-users, bill other local carriers for reciprocal compensation, and bill interexchange carriers for originating and terminating access charges. [Gillan Aff. at ¶ 7.] Proceeding with the test is a priority to LCI because LCI has recognized that resale is only an entry strategy, and will not sustain effective competition for any substantial period of time. [Bingaman Aff. at ¶ 4.]

**B. Ameritech's Refusal To Provide The Network
Elements In The Combination Requested By LCI.**

As of this date, Ameritech has refused to provide LCI with the network elements in combination that LCI has requested. [Charity Aff. at ¶ 5; Bingaman Aff. at ¶ ____.] Instead, Ameritech has indicated it will provide the network elements in only one of two combinations: (1) loops, unbundled switching, and dedicated transport; and (2) loops and unbundled switching, with transport over Ameritech's network provided not as a network element, but rather as a wholesale service. [Gillan Aff. at ¶ 8.] Moreover, under neither proposal was Ameritech willing to acknowledge that LCI, as the exchange service and exchange access provider, would be entitled to collect access revenue and reciprocal compensation in the manner requested by LCI. [*Id.*] Ameritech's position in this regard is contrary to the Commission's Local Competition Order,³ its Order on Reconsideration,⁴ and its most recent order in the Access Charge Reform Docket.⁵ Indeed, in its Access Charge Reform Order, the Commission specifically recognized that "the availability of access services at competitive levels is vital to the general approach" it adopted in its order and that the "growth of competition, including from competitors using unbundled network elements"

³ See ¶ 363, the relevant portions of which are quoted in footnote 2, *supra*.

⁴ See ¶ 11, the relevant portions of which are quoted in footnote 2, *supra*.

⁵ See *In the Matter of Access Charge Reform*, Docket No. 96-262, First Report and Order at ¶ 337 (May 16, 1997), where the Commission found as follows:

was essential to "move overall access rate levels toward forward-looking economic costs." Access Charge Reform Order at ¶ 337.

Ameritech has not claimed it is technically infeasible to provide the elements in the combination requested by LCI. Instead, Ameritech's initial position was that it is not legally obligated to provide, among other things, the "common transport" over Ameritech's interoffice network that LCI had requested. Ameritech's position is again contrary to this Commission's orders and regulations. [See Local Competition Order at ¶¶ 440-443; 47 C.F.R. § 51.319(d).] It has also been rejected by two state commissions in Ameritech's region, Illinois and Wisconsin.⁶

In addition to Ameritech's spurious legal position, Ameritech recently advised LCI that it lacked the engineering resources to provision and test LCI's network platform because

We further noted that sections 251(c)(3) and 252(d)(1), the statutory provisions establishing the unbundling obligation and the determination of network element charges, do not compel telecommunications carriers using unbundled network elements to pay access charges. *Moreover, these provisions do not restrict the ability of carriers to use network elements to provide originating and terminating access. Allowing incumbent LECs to recover access charges in addition to the reasonable costs of such facilities would constitute double recovery because the ability to provide access services is already included in the cost of the access facilities themselves.*

(Emphasis supplied.)

⁶ See *Investigation Concerning Illinois Bell Telephone Company's Compliance With Section 271(c) of the Telecommunications Act of 1996*, Docket No. 96-0404, Hearing Examiner's Proposed Order (March 6, 1997) at p. 36 ("We find that Ameritech's position on shared transport is inconsistent with the FCC's order and with the common understanding of shared transport. . . . Therefore, this element of the check-list has not been met [by Ameritech]."); See Ex. __ hereto; *Matters Relating to Satisfaction of Conditions for Offering InterLATA Service (Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin)*, Docket No. 6720-TI-120, Findings of Fact, Conclusions of Law and Second Order (issued May 30, 1997) at p. 49 ("Accordingly, the Commission finds that Ameritech's unbundled transport offering is deficient because it does not offer shared transport. Ameritech must offer shared transport with the meaning of shared transport being that it uses Ameritech's routing tables and it does not require separate engineering or dedicated ports.").

it was busy conducting a network platform "test" with AT&T. [See Bingaman Aff., Ex. B, at ¶ 24.] In lieu of ordering and testing its own network platform, Ameritech suggested that LCI "observe" the AT&T test. [*Id.* at ¶¶ 24-26.]

If Ameritech is unable to provision and test two separate network platforms at the same time, particularly given the simple combination of elements requested by LCI, then it certainly cannot be said to be "providing" this checklist item, even if "provide" is interpreted to mean something less than "actually furnish." Thus, for example, Ameritech does not comply with the Department of Justice's interpretation of "provide," which requires a demonstration by the BOC that "it is willing and able promptly to satisfy requests for such quantities of the item as may reasonably be demanded by providers, at acceptable levels of quality." [See *In the Matter of Application of SBC Communications, Inc., et al., pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma*, CC Docket No. 97-121, Evaluation of the United States Department of Justice at 23 (May 16, 1997) ("DOJ Evaluation").]

Moreover, the test as currently defined with AT&T will not test certain critical aspects of Ameritech's ability to furnish the combined network elements that were requested by LCI in its test. In particular, there have not yet been established any procedures by which to test Ameritech's ability to measure, record and transmit billing information, including billing data that would permit AT&T to bill access charges, originating and terminating, and reciprocal compensation. [Gillan Aff., Ex. A at ¶ 13.] The test is further deficient because: (1) it is limited in the number of line class codes that will be used; (2) it is only testing one type of switch, whereas Ameritech has several different switch types in its network; (3) it will not test the ability to connect a customer served by one network platform to a customer served by a different network platform; and (4) it will not test whether Ameritech will be able to suppress its access billings to interexchange carriers from calls originating and terminating over the network platform. [*Id.*] Thus, as it now stands, the AT&T "test" is so limited that the results from it will not permit any meaningful determination as to whether

Ameritech is capable of providing combined network elements in a commercially viable manner.

Ameritech's "test" with AT&T should be contrasted with the so-called "Friendly User Trial" that Ameritech itself is performing for its planned long distance service, recently discovered by the Commission. [See Letter from Lynn S. Shapiro to Regina Keeny, dated April 21, 1997, Exhibit D hereto.] In defending its "Friendly User Trial" to the Commission, Ms. Shapiro, Ameritech's Executive Director for Federal Relations, stated:

In preparing to enter into the distance business, Ameritech has started from scratch -- both the facilities-based portion of its work and the operations system it support are brand new. Ameritech has developed twenty-seven major systems that must all interface and interoperate together. These systems include ordering, provisioning, rating and billing systems -- systems which are the core of any business. It is the largest development and implementation of support systems in the chosen configuration in the country -- ever. It consists of five million lines of software code and 300 interfaces. It must be exhaustively tested, tuned, and refined before Ameritech enters the long distance market. Customers will demand and are entitled to nothing less.

[*Id.* at p. 3 (emphasis supplied).] Ms. Shapiro goes on to advise the Commission of Ameritech's plans to expand the "Friendly User Trial" to include additional Ameritech employees "based on the recommendation of an outside consultant who recommends that all of the systems be tested for a peak load of 20,000 orders per day. . . for ninety days." [*Id.* at p. 4 (emphasis added).]

Clearly, Ameritech has recognized the type of testing that is necessary to be assured that it can provide reliable service to its customers, especially when it is a service that Ameritech has not previously provided. Such is also the case with LCI's and AT&T's network platforms, yet Ameritech refused to conduct testing for one, and for the other, it sets up a "test" that pales in comparison to the one that it conducts for itself when its own business and reputation is on the line.

In short, until Ameritech is able to conclusively demonstrate a capability to provide combined network elements in commercially reasonable quantities, its application is premature and must be denied.

**III. AMERITECH'S APPLICATION MUST BE DENIED
BECAUSE IT IS NOT CURRENTLY PROVIDING LCI
WITH NONDISCRIMINATORY ACCESS TO THE
FUNCTIONS OF ITS OSS**

Ameritech is obligated under the Act to provide LCI (and all other requesting CLECs) with nondiscriminatory access to its OSS for both resale services and network elements. [See § 271(c)(2)(B)(ii) and (iv); § 251(b)(1) and (c)(3).] This Commission recognized in its Local Competition Order that: (1) "it is absolutely necessary for competitive carriers to have access to operations support system functions in order to successfully enter the local service market" [at ¶ 521]; (2) if CLECs do not have access to an ILECs OSS functions "in substantially the same time and manner that an incumbent can for itself, [they] will be severely disadvantaged, if not precluded altogether, from fairly competing" [at ¶ 518]; and (3) "nondiscriminatory access to these support system functions, which would include access to the information systems contained, is vital to creating opportunities for meaningful competition." [*Id.*].

Ameritech is not currently providing LCI with nondiscriminatory access to its OSS functions in several significant respects. *First*, Ameritech is maintaining two separate billing systems in its OSS which prevents LCI from obtaining timely and accurate billing usage data for certain of its customers, and results in double billing by Ameritech to those customers. *Second*, Ameritech has not provided LCI with equal access to Ameritech's Universal Service Order Codes ("USOCs"), which has led to ordering and provisioning problems and delays for LCI and its new customers. *Third*, Ameritech has not been providing LCI with timely billing information, including monthly invoices and customer call record information. Each of these issues are addressed below.

**A. Ameritech's Two Billing Systems Discriminate
Against LCI In Its Resale Business.**

LCI has discovered during the course of its resale efforts that Ameritech's OSS contains at least two separate billing systems, an old system for accounts with grandfathered products, and a new system for new products and services. [Charity Aff. at ¶ 13.] Ameritech has advised LCI that, for it to receive usage information on its customers' accounts, those accounts must be on Ameritech's new billing system. [*Id.*] Ameritech's new billing system is not, however, compatible with its old billing system. [*Id.*] Thus, when LCI sells its local services to a customer that is under the old billing system, Ameritech has been unable to provide the usage data to LCI for that customer, which, in turn, prevents LCI from providing an accurate bill to the customer, and the customer continues to receive bills from Ameritech. [*Id.*]

In just the few months that LCI has been doing business in Ameritech's region, LCI already has encountered this problem with several of its new customers. [*Id.*] It has been a problem that LCI repeatedly has raised with Ameritech, and one that has occupied an inordinate amount of LCI staff and management time. [*Id.* at ¶ 14.]⁷ This problem has also caused at least one of LCI's new accounts, a small hospital, to switch back to Ameritech service, where this type of billing problem had never existed for it in the past. [*Id.*] Until this problem is resolved, LCI cannot provide service to certain of its customers that is equal to that which can be, and is, provided by Ameritech itself. Thus, LCI is not at parity with Ameritech, and is disadvantaged in its efforts to compete for local service business.

⁷ LCI anticipates that this problem will only increase in scope once LCI had fully implemented and begins using Ameritech's electronic interfaces. See Charity Aff. at ¶ 6.

B. Ameritech Has Not Provided LCI With Equal Access To Accurate And Up-To-Date USOCs.

USOCs are alpha-numeric codes that identify particular telecommunication products and services. Although USOCs were originally a language standardized by BELLCORE, for a variety of reasons, each ILEC has, over the years, implemented its own, non-standard USOCs that it uses to order, provision and bill its various products and services. [Charity Aff., Ex. C at ¶ 8.] This is the case with Ameritech. [*Id.*]

In order to resell its service to a potential customer, LCI must first obtain from Ameritech a copy of its customer service record ("CSR") for that potential customer. Ameritech currently provides its CSRs in varying formats, although all of them are in free form text, which makes them difficult to read and interpret, either manually or electronically. [*Id.* at ¶ 9.] While some of the CSRs provide an English translation to the alpha-numeric USOC, others do not. [*Id.*] Moreover, none of the CSRs currently provide any information on whether a particular USOC is resellable. [*Id.*] Without this information, LCI's resale efforts are disadvantaged because LCI cannot determine with any accuracy the type of service a customer currently had, whether that service is a resellable product, or whether that service is subject to any contractual commitments. This has led, and will continue to lead, to ordering and provisioning problems and delays for LCI's new customers, problems that Ameritech itself does not face because, obviously, it has access to its own up-to-date USOCs. [*Id.*]

LCI has repeatedly requested that Ameritech provide it access to this important information. [*Id.* at ¶ 10.] To date, Ameritech has failed or refused to provide LCI with an up-to-date and accurate USOC listing equal to that which it has for itself. [*Id.*]

C. Ameritech Has Not Provided LCI With Timely Billing Information.

As a reseller, LCI depends upon Ameritech for the data it needs to bill its local customers. Ameritech currently sends two types of billing data to LCI: (1) daily usage files, and (2) monthly bills from Ameritech's Electronic Billing Service (referred to by

Ameritech as "AEBS"). [See Affidavit of W. David Marlin ("Marlin Aff.") at ¶ 5.] Ameritech transmits both daily usage file data and AEBS data electronically across a network data mover known as "Connect:Direct." LCI established the "Connect:Direct" link specifically to speed the transmittal of daily usage file data from Ameritech. [*Id.*]

1. Daily Usage Files.

Daily usage files contain the call record information that LCI needs to bill its local customers. When one of LCI's local customers makes a call, information concerning that call, including the customer's telephone number and the length of the call, is captured electronically by Ameritech's switch at the time the call passes through the switch. [*Id.* at ¶ 6.] Ameritech sends this call record information to LCI in what are called daily usage files, which are batch files that typically contain call record information for several thousand calls. [*Id.*]

Ameritech does not provide LCI with timely call record information, even though Ameritech's switches immediately capture that information as LCI calls pass through the switch. [*Id.* at ¶ 7.] Ameritech should be providing this information to LCI within 24 to 36 hours after the call passes the switch. In its Ohio Resale Agreement, with LCI, however, Ameritech would commit only to use "best efforts" to transfer call record information to LCI within 72 hours of a call. [*Id.*]

Currently, Ameritech sends virtually no call record information to LCI within 24 to 36 hours after the call is made. [*Id.* at ¶ 8.] Moreover, over the past seven months (November, 1996 through May, 1997), Ameritech has been transmitting call record information four days or more after the calls were made on over 50% of the calls by LCI's customers. [*Id.* at ¶ 8 and Exhibit A.] Ameritech has not made any improvement in its timely delivery of call record information, despite LCI's repeated requests for improvement over the past several months. [*Id.*] Indeed, this was an issue that was escalated by LCI to Ameritech's president of its wholesale service affiliate back in February of 1997. [*Id.*] Nevertheless, Ameritech has not made any effort to correct its delays in transmitting call

usage data. Indeed, as usage has ramped up (ever so slightly, compared to the enormous call usage Ameritech will have to report when significant competition exists in its region), Ameritech's timeliness has declined. As the Marlin affidavit shows, the timeliness of call record detail was worse in May, 1997 than in the immediately preceding months. Marlin Aff., Ex. F hereto.

In addition to the delay in providing call record information, Ameritech has, on occasion, failed to transmit any call usage data to LCI. [*Id.* at ¶ 9.] This occurred most recently on May 24th, when Ameritech failed to transmit call record information for approximately 20,000 calls made on May 21st. [*Id.*] The problem still has not been resolved. The calls are just "lost." Moreover, LCI does not receive any call usage data on at least 120 lines used by its customers. [*Id.* at ¶ 10.] LCI has identified and provided Ameritech with the telephone numbers of these lines, but, to date, Ameritech has failed to determine why it is not providing any usage information to LCI. [*Id.* at ¶ 10 and Exhibit B.]⁸ Finally, Ameritech has made unilateral changes to its billing software which has delayed distribution of call record information. On May 17, Ameritech changed the software it uses to provide usage data to resellers without bothering to inform LCI. [*Id.* at ¶ 11.] This changes caused a delay in Ameritech's transmission of call record information for two days. [*Id.*]

2. AEBS Invoices.

Ameritech has also repeatedly delayed sending its monthly AEBS invoices to LCI for the services that LCI purchases from Ameritech. AEBS bills contain monthly summaries of recurring charges, such as flat rate service charges and non-recurring charges, such as

⁸ On June 9, 1997, LCI received a response to its May 22, 1997 letter to Neil Cos, for the first time. See Ex. O hereto. The lines in question were addressed. Ameritech has now asked LCI to provide customer names that should be receiving usage before Ameritech will research further. LCI will respond to this request promptly

installation charges and service fees for maintenance calls. [*Id.* at ¶ 12.] As with call record information, LCI needs AEBS information to bill its local customers. [*Id.*]

Ameritech's AEBS Implementation Guide indicates that LCI should receive AEBS data for Michigan in 10 to 12 days after the end of each month. [*Id.* at ¶ 13 and Exhibit C.] LCI has received AEBS bills sporadically, and always past the due date. Thus, for example, LCI did not receive the November AEBS bill until January 6; the December bill was received on January 14; the January bill was not received until March 1; the February bill was received on March 26; the March bill was received on April 17; and the April bill was received on May 16. [*Id.*] Again, this is a problem that LCI has repeatedly brought to Ameritech's attention, but Ameritech has yet to take any steps to correct it.⁹

Ameritech's refusal to provide this billing information on a timely basis is having, and will continue to have, an adverse impact on LCI's ability to grow and compete effectively as a local service provider within Ameritech's region. The adverse impact on LCI's business includes:

- **Untimely call record information results in billing delays:**

Many of the customers whom LCI has persuaded to leave Ameritech are already long distance customers of LCI. [*Id.* at ¶ 14.] These customers expect and want to receive one bill from LCI that incorporates all of the local and long distance calls made by the customer during that billing cycle. [*Id.*] LCI typically has all of the information necessary to invoice its long distance service within one to two days following the close of the billing cycle. Because of Ameritech's failure to timely transmit call record data and AEBS bills, LCI is forced to delay sending its combined invoice to customers for an additional three to five days, sometimes even longer. [*Id.*] Some customers of LCI have

⁹ After doing business with Ameritech in the last eight months, LCI, just last night, received AEBS information by the 10th day following the close of the prior month's business.

complained that they have not been receiving their invoices on as timely a basis as they previously did when their local service was provided by Ameritech. [*Id.* at ¶ 16.]

- **Billing delays affect LCI's cash flow:**

When LCI is forced to delay sending invoices for four or five days (or even more), this affects LCI's cash flow because it typically means LCI is paid four to five days (or more) later than it should have received payment. [*Id.* at ¶ 15.]

- **Untimely call record information results in local calls being billed out of cycle:**

Even though LCI has delayed invoicing its customers in order to capture in the appropriate billing cycle as many local service calls as it can, LCI has still been forced to back bill local calls due to Ameritech's failure to timely provide call record information. [*Id.* at ¶ 14.] When LCI sends late bills to its customers, and when those bills include charges incurred in months previous, LCI loses credibility with its customers, who expect LCI to provide bills that are as accurate and as timely as the bills they received when they were Ameritech customers. [*Id.* at ¶ 16.]

In sum, it is clear that Ameritech has not met its obligation to provide parity of access to its OSS functions. Its petition should, therefore, be denied.

IV. AMERITECH HAS NOT PROVEN THAT THE ELECTRONIC INTERFACES TO ITS OSS ARE OPERATIONALLY READY.

While Ameritech devotes a considerable portion of its application to OSS issues, the fact remains that Ameritech has not yet proven (and cannot prove on the record before this Commission) that its interfaces to its OSS are sufficiently "operationally ready" such that Ameritech can handle CLEC demand and provide, as it must, parity of access for both resale services and network elements. The Department of Justice recently summarized a BOC's OSS obligations under the Section 271 checklist. The Department noted that it would consider "whether a BOC has made resale services and unbundled elements, as well as other checklist items, practicably available by providing them via wholesale support processes

that (1) provide needed functionality; and (2) operate in a reliable, nondiscriminatory manner that provides entrants a meaningful opportunity to compete." [DOJ Evaluation at p. 27.] The Department of Justice further noted that:

In determining whether a BOC's wholesale support processes can provide the necessary functionality, the Department will view internal testing by a BOC as substantially less persuasive evidence of operability than testing with other carriers, and testing in either manner less persuasive evidence than commercial operation.

[*Id.* at p. 29.]

Ameritech has not met these standards. More than one-half of Ameritech's OSS interfaces have yet to be subjected to commercial operation. [See Schedule 3 to Affidavit of Robert H. Meixner on Behalf of Ameritech Michigan.] These are primarily the interfaces to Ameritech's OSS for unbundled elements. [*Id.*] Indeed, Brooks Fiber, the carrier in Michigan that is currently responsible for ordering the bulk of the unbundled elements provided thus far by Ameritech -- unbundled loops -- is still largely using manual processes to order its loops from Ameritech. This is what Brooks Fiber recently told the Michigan Public Service Commission on the subject of Ameritech's OSS for unbundled elements:

Ameritech claims to have processed 31,761 orders for unbundled loops and 1,338 orders for resold services over its electronic interfaces through February, 1997, and asserts that Brooks is currently "on-line" with Ameritech in placing "live" orders for resale or unbundled loops through its interface. [Citation omitted.] These claims are false and misleading. Although Brooks is unaware of the number of orders for unbundled loops Ameritech has processed for other carriers, Brooks does know that *Ameritech has not yet processed a single "live" order for resale or unbundled loops for Brooks through its interface.* The file transfer system between Brooks and Ameritech used to transmit ASR and FOC data is not "live" and does not comply with the requirements for OSS.

[*On The Commission's own Motion to Consider Ameritech Michigan's Compliance with the Competitive Checklist in § 271 of the Telecommunications Act of 1996*, Case No. 11104, Response of Brooks Fiber Communications of Michigan to Ameritech Michigan's Submission of Additional Information at p. 5 (April 15, 1997).]